Adjoining-landowner disputes

How businesses can avoid or resolve disputes with neighboring landowners

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Disputes between adjoining landowners can be bitter. Landowners, whether they be businesses or individuals, want to "protect their turf." Landowners upset with their neighbors will often rush into court with a spare-no-expense resolve.

"But that can be foolhardy, because they often don't realize the magnitude of the expense," says William J. Maffucci, of counsel with Semanoff Ormsby Greenberg & Torchia, LLC in Huntingdon Valley, Pa.

Smart Business spoke with Maffucci about ways businesses that own real property can avoid and economically resolve disputes with neighboring owners.

What types of disputes arise between adjoining owners?

I would put them in five categories.

First are traditional disputes about the location of a boundary. Resolving these disputes almost always requires a survey. Sometimes the parties agree to be bound by a single survey or by the opinion of a single surveyor. More often, the parties each retain their own surveyor. And the surveyors don't always agree. A boundary dispute is often a 'battle of the surveyors,' with a court or other arbiter deciding which surveyor prevails.

There is a different type of boundary dispute that isn't resolved by surveys. A claimant may instead be relying upon the doctrine of 'adverse possession' or on the related doctrine of 'consentable line by recognition and acquiescence.' Both flow from the principle, recognized by the courts, that an open and notorious use of property continuously over a long period (21 years in Pennsylvania) by one who does not hold record title to it but who nevertheless acts like its owner, putting up a hostile front and fighting off competing claims of title, effectively becomes the owner of the property.

Next are easement disputes. These are disputes in which your neighbor acknowledges that you own the property but claims a right to use it, such as to drive across it. Many of these claims are based on either 'prescription' or 'implication.' A 'prescriptive easement' is acquired in the same way title is acquired by adverse possession: through open and notorious use continuously over a sufficient period. But a prescriptive easement doesn't prevent the owner from using the property, too. And it doesn't result in a change of ownership; it results only in the right to continue the use perpetually. An 'easement by implication,' by contrast, is based upon logic. The law recognizes, for example, that when the obvious consequence of a sale or subdivision is to leave lot owners with no access to a public road other than by passage over the land conveyed or subdivided away, the owner of the landlocked land has an 'easement by implication' to travel over the other land.

Then, there are disputes over whether an owner is using his or her own property for an improper purpose. These are usually resolved under local zoning law or under the law of 'nuisance.' The latter recognizes that even a use that is permitted under the zoning ordinance may be enjoined if it is inherently offensive to neighboring properties.

Last are encroachment disputes, whether the encroaching items be artificial (buildings, parking areas) or natural (tree branches, roots). Your neighbor's building or tree's branches extend onto your property. Here the law usually gives you the upper hand; the courts generally require that a proven encroachment be removed.

Once a lawsuit is filed, is it likely that the case will proceed all the way to a formal court trial?

No. Most cases are eventually settled. They don't settle quickly, because they begin with so much bad blood. But litigation between neighbors can be very expensive. It could easily cost more than $100,000 in legal fees to take an adjoining-neighbor dispute through trial.

And the expense will often escalate as trial approaches. So even litigants who began with a 'spare-no-expense' approach are often forced to undertake a cost-benefit analysis. Winning the case could cost more than the property is worth. ●